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**DEPARTMENT OF COMMERCE**

**National Telecommunications and Information Administration**

**[Docket Number: 131219999-3999-02]**

**RIN 0660-XC008**

**First Responder Network Authority; National Environmental Policy Act Implementing Procedures and Categorical Exclusions**

**AGENCY:** National Telecommunications and Information Administration, U.S. Department of Commerce.

**ACTION:** Notice, Request for Public Comment.

**SUMMARY:** The First Responder Network Authority (FirstNet) publishes this notice to request public comments on proposed categorical exclusions (CEs) of actions that FirstNet has determined do not individually or cumulatively have a significant effect on the human environment and, thus, should be categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement under the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.* (NEPA).

**DATES:** Comments on the proposed list categorical exclusions must be received by [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** The “Draft FirstNet Administrative Record” for the proposed categorical exclusions is available at: <http://www.ntia.doc.gov/category/firstnet>. The public is invited to submit written comments via email to [FirstNetNEPAcomments@ntia.doc.gov](mailto:FirstNetNEPAcomments@ntia.doc.gov) or mail (to the address listed below). All comments submitted in electronic form should be in a standard format such as Word or PDF. All comments submitted via mail should include, to the extent available,

an electronic copy of the submission. However paper copies of comments will be accepted. All comments received will be made a part of the public record and may be posted to NTIA's website (<http://www.ntia.doc.gov/category/firstnet>) without change. All personally identifiable information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Eli Veenendaal, National

Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., HCHB Room 4713, Washington, DC 20230; (202) 482-2188; or [evenendaal@ntia.doc.gov](mailto:evenendaal@ntia.doc.gov).

**SUPPLEMENTARY INFORMATION:**

**I. National Environmental Policy Act**

The National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321-4347) (NEPA) requires federal agencies to undertake an assessment of environmental effects of their proposed actions prior to making a final decision and implementing the action. NEPA requirements apply to any federal project, decision or action that may have a significant impact on the quality of the human environment. NEPA also establishes the Council on Environmental Quality (CEQ), which issued regulations implementing the procedural provisions of NEPA. Among other considerations, CEQ regulations require federal agencies to adopt their own implementing procedures to supplement the Council's regulations, and to establish and use "categorical exclusions" to define categories of actions that do not individually or cumulatively have a significant effect on the human environment. Such actions do not require preparation of an environmental assessment or an environmental impact statement as required by NEPA.

The Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. No. 112-96, 126 Stat. 156 (2012) (Act) creates and authorizes FirstNet to take all actions necessary to ensure that the design, construction, and operation of a nationwide interoperable public safety broadband network (PSBN) based on a single, national network architecture. The Act meets a long-standing and critical national infrastructure need, to create a single, nationwide interoperable PSBN that will, for the first time, allow police officers, fire fighters, emergency medical service professionals, and other public safety officials to effectively communicate with each other across agencies and jurisdictions.

As a newly created entity, FirstNet does not have any existing CEs. The proposed CEs are necessary to assist FirstNet in applying the appropriate level of NEPA review for activities undertaken by FirstNet in the design, construction, and operation of the PSBN. Accordingly, FirstNet is requesting public comment on the following CEs (as well as the administrative records supporting each exclusion) before utilizing them as part of its NEPA review process.

## **II. Development Process for Establishing FirstNet CEs**

FirstNet is responsible for, at a minimum, ensuring nationwide standards for the use of and access to the network; issuing open, transparent, and competitive requests for proposals (RFPs) to build, operate, and maintain the network; encouraging these RFPs to leverage, to the maximum extent economically desirable, existing commercial wireless infrastructure to speed deployment of the network; and overseeing contracts with non-federal entities to build, operate, and maintain the network.

Due to the similarity in project activities and scope, FirstNet is seeking to establish its CEs based primarily on the existing CEs that were approved and applied by NTIA in the implementation of the Broadband Technology and Opportunities Program (BTOP); a program

that provided grant funding for the deployment of broadband infrastructure throughout the country. The list of CEs that were developed for the BTOP were compiled at the Department of Commerce (DOC) through a joint effort with the U.S. Department of Agriculture's Rural Utilities Service (RUS); NTIA; DOC's Energy, Safety, and Environment Division; and the National Oceanic and Atmospheric Administration (NOAA). The BTOP CEs were approved by DOC Office of General Counsel and the designated Senior Agency Official for NEPA at NOAA.

Each proposed BTOP CE was reviewed and deliberated in concept, coverage, applicability, and wording by members of the review panel. The panel carefully reviewed the Administrative Record on each of the CEs to ensure they fulfilled the goal of balancing increased administrative efficiency in NEPA compliance with avoidance of misinterpretations and misapplications of exclusionary language that could lead to non-compliance with NEPA requirements. The review panel concurred that the below listed BTOP CEs meet both objectives.

The proposed FirstNet CEs are currently in use by other agencies and are comparable to those applied by NTIA as part of BTOP. Specifically, these CEs are comparable because they (1) relate to planning, deployment, and construction of broadband infrastructure; (2) utilize the same methods and equipment of installing broad infrastructure; (3) are not restricted to an environmental setting or geographic region of the country; and (4) subject to review for extraordinary circumstances.

NTIA, through BTOP, provided over \$4 billion in federal funding to 233 projects to construct and expand telecommunications infrastructure and increase broadband adoption throughout all U.S. states, territories and the District of Columbia. BTOP projects were funded in four categories. These four categories included 1) Broadband Infrastructure-Last Mile; 2) Broadband Infrastructure- Middle Mile; 3) Public Computer Centers; and 4) Sustainable

Broadband Adoption. BTOP infrastructure projects typically required the deployment of broadband equipment including the installation of fiber optic cables, cell towers, antenna colocations, buildings, and power units. The methods used for deploying this equipment varied depending on the individual project plan and location but in general followed standard commercial approaches for completing such work (*e.g.*, the use of trenching and plowing methods construction methods to install buried fiber, aerial installation of fiber cables on existing poles, or collocating antenna equipment on existing towers). These projects were initially required to be complete within three years of the original award date and intended to be self-sustaining at the end of the award period. The nationwide scope of BTOP resulted in projects being implemented in wide range of environmental settings (*e.g.*, varying biological, cultural, or socio-economic conditions) each requiring a detailed environmental review focusing on the unique characteristics of a specific project area and type of proposed project.

Each BTOP project was individually reviewed for NEPA compliance prior to funding. Based on NTIA's review, the CEs below applied to 133 projects and 100 projects, primarily the infrastructure projects, were required to complete and Environmental Assessment (EA) due to the potential existence of extraordinary circumstances. Typically, these extraordinary circumstance included project implementation activities in locations where NTIA could not reasonably determine a project's potential effect on environmentally or culturally sensitive resources (*i.e.*, project activities occurring on or near endangered habitat or species, water resources, historic properties, or tribal country) based on its review of an applicant's responses to the environmental questionnaire and project descriptions and mapping submitted as part of the BTOP application. To date, NTIA has reviewed and adopted 99 EAs and issued a Finding of No Significant Impact (FONSI) for each of those projects, with the completion and review of one

EA still in process. When evaluating the effects of the completed projects where an EA was prepared and reviewed and a FONSI was issued, NTIA has consistently found that the actions resulted in no significant environmental impacts.

FirstNet, similar to BTOP, is mandated to plan and construct telecommunication and broadband infrastructure across the United States and its territories. The specific activities anticipated to be undertaken by FirstNet are comparable to BTOP project implementation activities and will primarily include the installation of cables, cell tower, antenna colocations, buildings, and power units as defined in the following examples:

- (a) *Buried Plant/Facilities*: The construction of buried outside plant facilities generally consists of plowing or trenching cable at a depth of approximately 36" to 48" alongside the road usually in a utility corridor or within public road rights-of-way.
- (b) *Aerial Plant/Facilities*: The construction of aerial facilities is either done by installing new poles and hanging cables on it on public rights-of-way or by installing cables using existing poles lines from a third party.
- (c) *Towers*: The construction of towers for cell sites and/or microwave dishes. Tower construction is typically done by installing a concrete foundation and building the tower on it. The heights of the towers vary from 120 feet to 400 feet.
- (d) *Co-Locations*: The mounting or installation of an antenna on an existing tower, building, or structure for the purpose of transmitting and/or receiving radio frequency signal for communication purposes.
- (e) Building construction generally consists of installing small pre-fabricated shelters on tower sites that are used for housing electronic equipment. These shelters are usually placed on concrete pads and generally require very minimal disturbance of the land.

On an extremely rare occasion, the construction of a headquarters and/or warehouse building may be necessary. The amount of land disturbance resulting from this type of construction can vary depending on the size of the proposed building.

- (f) *Power Units*: The installation of power units, such as an uninterruptible power supply (UPS), could be added to existing third party tower sites either on the existing concrete pad or by adding a new concrete pad if required at the site.

FirstNet is also required to leverage, to the maximum extent economically possible, existing commercial infrastructure in its deployment and operation of the PSBN.

The geographic scope of the PSBN will, like BTOP, encompass all U.S. states and territories. Thus, FirstNet actions will likely occur in a wide range of environmental settings and require FirstNet to establish a process akin to that instituted by BTOP for analyzing proposed actions and making NEPA determinations based on the specific location and type of proposed project activities of which the proposed CEs would be an integral part. Accordingly, because the characteristics of the actions in deploying and operating the PSBN are comparable in intensity, scope, and geography to BTOP projects and based on the outcomes of NTIA applying these CEs to BTOP projects, FirstNet has determined that the proposed CEs will not have significant impacts on the human environment.

### **III. Proposed FirstNet Categorical Exclusions**

Certain types of actions undertaken by FirstNet will not normally require the completion of an environmental assessment or an environmental impact statement. These proposed categorical exclusions include:

- A-1: The issuance of bulletins and information publications that do not concern environmental matters or substantial facility design, construction or maintenance practices.

This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, these include exclusions from the U.S. Department of Commerce, U.S. Department of Agriculture, U.S. Department of Homeland Security, Federal Emergency Management Agency, U.S. Coast Guard, U.S. Navy, U.S. Air Force, U.S. General Administrative Services and the U.S. Department of the Interior.

A-2: Procurement activities related to the day-to-day operation of FirstNet including routine procurement of goods and services. This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, these include exclusions from the U.S. Department of Commerce, U.S. Department of Agriculture, U.S. Department of Homeland Security, U.S. Coast Guard, U.S. Navy and U.S. Air Force.

A-3: Personnel and Administrative Actions. This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, these include exclusions from the U.S. Department of Commerce, U.S. Department of Agriculture, U.S. Department of Homeland Security, U.S. Coast Guard and U.S. Army.

A-4: Purchase of existing facilities or a portion thereof where use or operation will remain unchanged. This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, these include exclusions from the U.S. Department of Commerce, U.S. Department of Agriculture and U.S. Department of Homeland Security.

A-5: Internal modifications or equipment additions (*e.g.*, computer facilities, relocating interior walls) to structures or buildings. This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, these include



exclusions from the U.S. Department of Commerce, U.S. Department of Agriculture and U.S. Department of Homeland Security.

A-6: Construction of buried and aerial telecommunications lines, cables and related facilities. This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, these include exclusions from the U.S. Department of Commerce, U.S. Department of Agriculture, U.S. Department of the Interior and U.S. Department of Energy.

A-7: Construction of microwave facilities involving no more than five acres (2 hectares) of physical disturbance at any single site. This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, these include exclusions from the U.S. Department of Commerce, U.S. Department of Agriculture and U.S. Department of Energy.

A-8: Construction of cooperative or company headquarters, maintenance facilities, or other buildings involving no more than 10 acres (4 hectares) of physical disturbance or fenced property. In particular, these include exclusions from the U.S. Department of Commerce, U.S. Department of Agriculture, U.S. Navy and National Aeronautics and Space Administration (NASA).

A-9: Changes to existing transmission lines that involve less than 20 percent pole replacement, or the complete rebuilding of existing distribution lines within the same right of way. Changes to existing transmission lines that require 20 percent or greater pole replacement will be considered the same as new construction. This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, these include

exclusions from the U.S. Department of Commerce, U.S. Department of Agriculture and U.S. Department of Energy.

A-10: Changes or additions to existing substations, switching stations, telecommunications switching or multiplexing centers, or external changes to buildings or small structures requiring one acre (0.4 hectare) or more but no more than five acres (2 hectares) of new physically disturbed land or fenced property. This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, these include exclusions from the U.S. Department of Commerce and U.S. Department of Agriculture.

A-11: Construction of substations, switching stations, or telecommunications switching or multiplexing centers requiring no more than five acres (2 hectares) of new physically disturbed land or fenced property. This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, these include exclusions from the U.S. Department of Commerce and U.S. Department of Agriculture.

A-12: Changes or additions to microwave sites, substations, switching stations, telecommunications switching or multiplexing centers, buildings, or small structures requiring new physical disturbance or fencing of less than one acre (0.4 hectare). This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, these include exclusions from the U.S. Department of Commerce and U.S. Department of Agriculture.

A-13: Ordinary maintenance or replacement of equipment or small structures (*e.g.*, line support structures, line transformers, microwave facilities, telecommunications remote switching and multiplexing sites). This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, these include exclusions from

the U.S. Department of Commerce, U.S. Department of Agriculture and U.S. Department of Energy.

A-14: The construction of telecommunications facilities within the fenced area of an existing substation, switching station, or within the boundaries of an existing electric generating facility site. This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, these include exclusions from the U.S. Department of Commerce, U.S. Department of Agriculture and U.S. Department of Energy.

A-15: Testing or monitoring work (*e.g.*, soil or rock core sampling, monitoring wells, air monitoring). This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, these include exclusions from the U.S. Department of Commerce, U.S. Department of Agriculture and U.S. Department of Energy.

A-16: Studies and engineering undertaken to define proposed actions or alternatives sufficiently so that environmental effects can be assessed. This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, these include exclusions from the U.S. Department of Commerce, U.S. Department of Agriculture and U.S. Department of Energy.

A-17: Rebuilding of power lines or telecommunications cables where road or highway reconstruction requires the applicant to relocate the lines either within or adjacent to the new road or highway easement or right-of-way. This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, these include exclusions from the U.S. Department of Commerce, U.S. Department of Agriculture and U.S. Department of Energy.

A-18: Phase or voltage conversions, reconductoring, or upgrading of existing electric

Distribution lines, or telecommunication facilities. This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, these include exclusions from the U.S. Department of Commerce, U.S. Department of Agriculture and U.S. Department of Energy.

A-19: Construction of standby diesel electric generators (one megawatt or less total capacity) and associated facilities, for the primary purpose of providing emergency power, at an existing applicant headquarters or district office, telecommunications switching or multiplexing site, or at an industrial, commercial or agricultural facility served by the applicant. This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, these include exclusions from the U.S. Department of Commerce and U.S. Department of Agriculture.

#### **IV. Paperwork Reduction Act**

The notice does not contain collection-of-information requirements subject to the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. § 3501 *et seq.*). Notwithstanding any other provisions of law, no person is required to, nor shall a person be subject to penalty for failure to comply with, a collection of information subject to the requirements of PRA unless that collection of information displays a currently valid OMB control number.

Dated: December 30, 2013.

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Stuart Kupinsky,  
Chief Counsel, First Responder Network Authority.

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